

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Brian DeRoberts	Team: Team # 2	CCRB Case #: 200914325	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/13/2009 11:30 PM	Location of Incident: Prospect Park West, Flatbush Avenue and Ocean Avenue	Precinct: 71	18 Mo. SOL 3/13/2011	EO SOL 3/13/2011	
Date/Time CV Reported Mon, 09/14/2009 2:00 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 09/14/2009 2:00 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Mark Kistoo	10224	943444	071 PCT
2. POM Juan Quiroz	09868	939263	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Juan Quiroz	Abuse: PO Juan Quiroz stopped § 87(2)(b)	
B.POM Mark Kistoo	Abuse: PO Mark Kistoo stopped § 87(2)(b)	
C.POM Mark Kistoo	Abuse: PO Mark Kistoo threatened to arrest § 87(2)(b)	
D.POM Juan Quiroz	Abuse: PO Juan Quiroz threatened § 87(2)(b) with the use of force.	
E.POM Mark Kistoo	Abuse: PO Mark Kistoo searched § 87(2)(b)	
F.POM Juan Quiroz	Abuse: PO Juan Quiroz issued a summons to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the call processing system on September 14, 2009 (encl. 8a-b). On September 13, 2009, at about 11:30 p.m., § 87(2)(b) was stopped and summoned by PO Mark Kistoo and PO Juan Quiroz in the vicinity of Prospect Park West, between Flatbush Avenue and Ocean Avenue in Brooklyn. The following allegations resulted from the officers' actions:

- **Allegation A – Abuse of Authority: PO Mark Kistoo stopped** § 87(2)(b)
- **Allegation B – Abuse of Authority: PO Juan Quiroz stopped** § 87(2)(b)
§ 87(2)(b), § 87(2)(g)
- **Allegation C – Abuse of Authority: PO Mark Kistoo threatened to arrest** § 87(2)(b)
- **Allegation D – Abuse of Authority: PO Juan Quiroz threatened** § 87(2)(b) **with the use of force.** § 87(2)(b), § 87(2)(g)
- **Allegation E – Abuse of Authority: PO Mark Kistoo searched** § 87(2)(b)
§ 87(2)(b), § 87(2)(g)
- **Allegation F – Abuse of Authority: PO Juan Quiroz issued** § 87(2)(b) **a summons.** § 87(2)(b), § 87(2)(g)
- § 87(4-b), § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) male who stands 5'11" tall and weighs 187 pounds. He has black hair and brown eyes. § 87(2)(b)

CCRB Testimony

On September 23, 2009, § 87(2)(b) was interviewed at the CCRB concerning the events that took place on September 13, 2009 (encl. 9a-d). On September 13, 2009, at approximately 11:30 p.m., § 87(2)(b) was sitting on a bench inside of Prospect Park West, near Flatbush Avenue in Brooklyn. § 87(2)(b) was discussing trivial things with his friend, § 87(2)(b) when a black unmarked Chevy Impala approached. The area was lit well given that it was

next to the carousel. Several other people were around. Prior to the officers approaching, § 87(2)(b) had observed these officers stop a male about 50 feet from § 87(2)(b) who was consuming alcohol. § 87(2)(b) was not consuming alcohol.

The Impala stopped approximately two feet in front of § 87(2)(b). PO Mark Kistoo (identified by name by § 87(2)(b)) asked § 87(2)(b) how he was doing. § 87(2)(b) stated that he was fine. PO Kistoo and PO2 (identified by the investigation as PO Juan Quiroz) exited the Impala. PO Kistoo requested to see § 87(2)(b)'s identification. § 87(2)(b) asked why he wanted to see his ID. PO Kistoo questioned § 87(2)(b) if he wanted to be in handcuffs. § 87(2)(b) told PO Kistoo that he did not want to be in handcuffs and that no one wants to be in handcuffs. PO Kistoo said that he remembered § 87(2)(b) and that he is the so-called teacher. PO Kistoo stated, "Remember that summons that I gave you last time? How much did you have to pay for that summons?" § 87(2)(b) told him the summons was thrown out in court.

PO Quiroz told § 87(2)(b) that the park is closed and requested his identification. § 87(2)(b) asked PO Quiroz what the problem was. PO Quiroz said, "Do you want to stumble? Do you want me to bang you upside the head?" PO Quiroz then told § 87(2)(b) to leave the area. § 87(2)(b) asked § 87(2)(b) to stay because § 87(2)(b) was scared. § 87(2)(b) did not leave. PO Quiroz asked § 87(2)(b) if he was drinking, took out his flashlight, and began to look around by the benches. § 87(2)(b) told PO Quiroz that he was not drinking and asked him if he looked inebriated. PO Kistoo again requested § 87(2)(b)'s ID.

PO Kistoo went into § 87(2)(b)'s pockets. He removed § 87(2)(b)'s ID from his right front pocket. § 87(2)(b) was wearing jeans and a sweatshirt. PO Kistoo also removed some papers and a couple of condoms from § 87(2)(b)'s pockets. PO Quiroz took § 87(2)(b)'s ID to the car. PO Kistoo asked if § 87(2)(b) and § 87(2)(b) were lovers. There was no indication at any point during the incident that suggested § 87(2)(b) was § 87(2)(b)'s lover. § 87(2)(b) asked for PO Kistoo's name and badge number, which he provided. PO Quiroz returned from the car and issued § 87(2)(b) a summons for disorderly conduct. § 87(2)(b) immediately called IAB. The incident lasted 10 to 15 minutes. § 87(2)(b) has dealt with PO Kistoo in the past. § 87(2)(b) stated that there are signs in the park that say it closes at 1:00 a.m.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b) male who stands 5'7" tall and weighs 140 pounds. § 87(2)(b) has brown hair and eyes.

CCRB Testimony

§ 87(2)(b) provided a phone statement on September 30, 2009 (encl. 10), and was interviewed at the CCRB on October 5, 2009 (encl. 11a-d), concerning the events of September 13, 2009. His statements are consistent and have been combined.

On September 13, 2009, between the hours of 11:00 p.m. and 11:30 p.m., § 87(2)(b) was standing next to § 87(2)(b) by the carousel inside of Prospect Park in Brooklyn. § 87(2)(b) was sitting on a bench. § 87(2)(b) had just approached § 87(2)(b) to tell him that it is time to leave the park because it is closed and the police are right around the corner. At this time, an unmarked police car had entered the park from Flatbush Avenue and Ocean Avenue and was driving on the sidewalk inside the park. § 87(2)(b) did not want to leave the park because he believed the park closed at 1:00 a.m.

The unmarked car approached § 87(2)(b) and § 87(2)(b) and stopped. PO1, who was the driver and identified by the investigation as PO Juan Quiroz, asked if they were okay and that the park is closed. § 87(2)(b) told the officers they are just leaving. § 87(2)(b) told the officers that the park is not closed and closed at 1:00 a.m. Both officers exited the vehicle. PO Quiroz

asked § 87(2)(b) for his identification. § 87(2)(b) refused to show PO Quiroz his identification and asked why he wanted to see it.

PO2, the passenger of the unmarked car, identified by the investigation as PO Mark Kistoo, searched § 87(2)(b) and removed § 87(2)(b)'s ID from his pant pocket. PO Kistoo took out his handcuffs and § 87(2)(b) told him that they were not necessary and that § 87(2)(b) was going to cooperate. PO Kistoo placed his handcuffs back. PO Kistoo gave PO Quiroz § 87(2)(b)'s ID. PO Quiroz brought the ID to the car. PO Kistoo remained with § 87(2)(b) and § 87(2)(b). PO Kistoo asked § 87(2)(b) to leave. § 87(2)(b) refused until § 87(2)(b) could also go. PO Kistoo asked § 87(2)(b) if § 87(2)(b) was his boyfriend. § 87(2)(b) wrote down the plate number of the police car and asked § 87(2)(b) who was about 20 feet away from him, to take a picture of the vehicle and dial 911 but § 87(2)(b) did not do so. PO Kistoo requested § 87(2)(b) to sit back down and asked him if he wanted him to take out his nightstick and bust him in the head. § 87(2)(b) sat down. PO Kistoo provided his name and shield number to § 87(2)(b). § 87(2)(b) was issued a summons for disorderly conduct and the officers left.

NYPD Statements:

Subject Officer: PO MARK KISTOO

- PO Kistoo is a § 87(2)(b).
- PO Kistoo was assigned to overtime patrol enforcement (hotspot) from 7:30 p.m. to 4:05 a.m. the following day and was working with PO Juan Quiroz. They were dressed in uniform and assigned to RMP 904, an unmarked black Chevy Impala.

Memo Book

“At 8:30p.m., two summonses issued for open container in front of 1375 [illegible] Street. Two males drinking Samuel Adams Beer 16oz. At 9:09p.m., three summonses issued in front of 8 Rutland Road Three males drinking plastic cups containing white foam. At 2:05a.m. end of tour shield # 10224.” PO Kistoo did not have a memo book entry concerning the stop of § 87(2)(b) which according to the UF-250 (stop and frisk report) occurred at 11:27p.m..

CCRB Testimony

On January 14, 2010, PO Mark Kistoo was interviewed at the CCRB concerning the events that took place on September 13, 2009 (encl. 12a-d). On September 13, 2009, at approximately 11:30 p.m., in the vicinity of Prospect Park West between Flatbush Avenue and Ocean Avenue in Brooklyn, PO Kistoo observed two males on the corner by the park entrance standing next to the benches talking. PO Kistoo was approximately 50 feet from the males when he observed that one of the males had a beer in his hand (identified by the investigation as § 87(2)(b)). As the officers approached, § 87(2)(b) threw the beer away. PO Kistoo could not recall the specific type of beer § 87(2)(b) was holding. The officers parked next to the two males and exited the vehicle. PO Quiroz asked § 87(2)(b) for his identification, which he provided. § 87(2)(b) was intoxicated and began to curse at the officers. PO Kistoo knew § 87(2)(b) was intoxicated because he was falling down, had blood shot eyes, and smelled of beer. § 87(2)(b)'s name was run for warrants. He did not have any and was only summonsed for the open container and littering. § 87(2)(b) was compliant to being issued a summons. The other male, § 87(2)(b) was not observed with any alcohol and he remained calm throughout the incident.

PO Kistoo denied going into § 87(2)(b)'s pocket to remove his identification. PO Kistoo denied searching § 87(2)(b) and removing various items from his pant pockets. PO Kistoo denied asking § 87(2)(b) if he wanted to be handcuffs. PO Kistoo never referred to § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) as lovers. § 87(2)(b) took out a dollar bill and wrote down PO Kistoo's name and badge number on it. This was the first time PO Kistoo stopped § 87(2)(b) and PO Kistoo confirmed that § 87(2)(b) had told him that he has stopped and harassed him in the past. The stop lasted five to ten minutes.

Subject Officer: PO JUAN QUIROZ

- *PO Quiroz is a § 87(2)(b).*
- *PO Quiroz was assigned to overtime patrol enforcement (hotspot) from 7:30 p.m. to 4:05 a.m. the following day and was working with PO Kistoo. They were dressed in uniform and assigned to an unmarked Chevy. PO Quiroz was the operator the entire tour.*

Memo Book

PO Quiroz did not have any memo book entries concerning this incident.

Stop and Frisk Report

The UF-250 report concerning this incident was received and filled out by PO Quiroz (encl. 17a-b) § 87(2)(b) was suspected of criminal possession of a weapon. § 87(2)(b) was stopped for three minutes and observed two minutes prior to being stopped. The circumstances leading to the stop included the following: actions indicative of casing victim or location, actions indicative of acting as a lookout, furtive movements, and actions indicative of engaging in violent crimes. The UF -250 also noted that § 87(2)(b) was frisked due to inappropriate attire and searched due to an outline of a weapon.

CCRB Testimony

On February 10, 2010, PO Juan Quiroz was interviewed at the CCRB concerning the events that took place on September 13, 2009 (encl. 13a-d). On September 13, 2009, at approximately 11:30 p.m. in the vicinity of Prospect Park West between Flatbush Avenue and Ocean Avenue in Brooklyn, § 87(2)(b) was observed with an open container inside of the park. PO Quiroz observed § 87(2)(b) with an open container of alcohol but could not recall what type or whether it was a bottle, can, or cup of alcohol. PO Quiroz and PO Kistoo were patrolling inside the park and they both made the decision to stop § 87(2)(b) because he was observed with an open container. Besides having an open container, § 87(2)(b) was not observed doing anything else illegal or suspicious.

The officers approached § 87(2)(b) and told him that he cannot drink in public. § 87(2)(b) was with § 87(2)(b) was never stopped by the officers and left upon their arrival. § 87(2)(b)'s identification was requested. § 87(2)(b) was not cooperative with providing his ID. The officers requested § 87(2)(b)'s identification two times before § 87(2)(b) provided it. PO Quiroz did not believe that he or PO Kistoo emptied § 87(2)(b)'s pockets. PO Quiroz denied searching § 87(2)(b) at any point during the incident. PO Quiroz never asked § 87(2)(b) if he wanted to "bang him upside the head." PO Quiroz never heard PO Kistoo make this comment.

§ 87(2)(b)'s identification was never removed from his pant pockets by the officers and that § 87(2)(b) willingly provided it. PO Quiroz never heard PO Kistoo ask § 87(2)(b) if he wanted to be in handcuffs. The stop lasted a couple of minutes. PO Quiroz did not know whether or not it was illegal for § 87(2)(b) to be in the Prospect Park on September 13, 2009, at 11:30 p.m.

PO Quiroz was shown the UF- 250 report for this incident. He confirmed being the reporter and recalled filling it out. PO Quiroz did not respond when asked why the report did not

Investigative Findings and Recommendations

Allegation A - Abuse of Authority: PO Mark Kistoo stopped § 87(2)(b)

Allegation B - Abuse of Authority: PO Juan Quiroz stopped § 87(2)(b)

According to the civilians, PO Kistoo and PO Quiroz approached § 87(2)(b) and told him that the park was closed. § 87(2)(b) explained to the officers that the park does not close until 1:00 a.m. At that time, PO Kistoo exited his vehicle and requested § 87(2)(b)'s identification. § 87(2)(b) was stopped and not free to leave at the point his ID was requested. PO Quiroz exited the vehicle as well. According to NYC Department of Parks and Recreation [1-03 General Provisions], *Persons may enter and use the parks from 6:00 a.m. until 1:00 a.m. unless other hours are posted* (encl. 4a-b). Additionally, the Parks provisions also say, *no person shall fail, neglect, or refuse to comply with the lawful direction or command of any police officer.*

§ 87(2)(g). Both officers testified that § 87(2)(b) was observed with an unknown type of open container of alcohol. § 87(2)(g). § 87(2)(b) was issued a summons for disorderly conduct, not open container. Neither PO Kistoo nor PO Quiroz made any memo book entries concerning stopping § 87(2)(b) for consuming alcohol. Although, PO Kistoo had two memo book entries for two prior stops for open container that occurred approximately two hours earlier. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

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§ 87(2)(b)

Allegation C – Abuse of Authority: PO Mark Kistoo threatened to arrest § 87(2)(b)

Allegation D – Abuse of Authority: PO Juan Quiroz threatened § 87(2)(b) with the use of force.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

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§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation E – Abuse of Authority: PO Mark Kistoo searched § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) testified and the Stop and Frisk report revealed that § 87(2)(b) was searched by PO Kistoo. Both PO Kistoo and PO Quiroz in their CCRB statements denied that § 87(2)(b)'s identification and the other items in his pockets were removed. § 87(2)(b)

§ 87(2)(g) (b)

§ 87(2)(b)

§ 87(2)(g)

Allegation F – Abuse of Authority: PO Juan Quiroz issued § 87(2)(b)

PO Quiroz issued summons # § 87(2)(b) to § 87(2)(b) for disorderly conduct, Penal Law section 240.20(1), engaging in fighting or violent, tumultuous or threatening behavior.

§ 87(2)(b), § 87(2)(g)

In a DCT Court case # 80570/05, PD v. Chan (encl. 2a-c), a civilian was issued a disorderly conduct summons in response to his questioning a stop, and this summons was found to be improper. Administrated Law Judge, the Honorable Claudia Daniels-DePeyster wrote, "Rather than complete an investigation or end his inquiry, the Respondent took offense that Bullock questioned the stop... He proceeded to issue him a summons for Disorderly Conduct when he engaged Bullock an interaction unnecessarily." § 87(2)(b), § 87(2)(g)

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Investigator: _____ Brian DeRoberts _____
Signature Print Date

Supervisor: _____

Title/Signature	Print	Date
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Reviewer: _____
 Title/Signature Print Date

Reviewer: _____

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